

ASSEMBLY BILL

No. 2198

Introduced by Assembly Member Houston

February 22, 2006

An act to amend Sections 725, 2241, and 2242 of, and to repeal and add Section 2241.5 of, the Business and Professions Code, and to amend Section 11156 of the Health and Safety Code, relating to healing arts.

LEGISLATIVE COUNSEL'S DIGEST

AB 2198, as introduced, Houston. Health care: controlled substances and dangerous drugs.

Existing law makes it unprofessional conduct for specified health care providers to engage in repeated acts of clearly excessive prescribing or administering of drugs or treatment, unless the health care provider is a physician and surgeon in compliance with the California Intractable Pain Treatment Act.

This bill would delete the provision prohibiting disciplinary action against a physician and surgeon who is in compliance with the California Intractable Pain Treatment Act. The bill would define "clearly excessive" to mean an amount or extent that is without substantial medical basis and is substantially greater than the usual amount of prescribing, administering, or use of the therapeutic modalities.

Existing law, the Medical Practice Act, provides for the licensing and regulation of physicians and surgeons by the Medical Board of California, and the violation of specified provisions of the act is a crime. The California Intractable Pain Treatment Act, in the Medical Practice Act, authorizes a physician and surgeon to prescribe or administer controlled substances to a person in the course of treatment

for a diagnosed condition causing intractable pain, except in certain circumstances, and prohibits disciplinary action against a physician and surgeon for such action.

This bill would define addict for purposes of these provisions. The bill would delete these provisions and would instead authorize a physician and surgeon to prescribe for, or dispense or administer to, a person for a medical condition drugs or prescription controlled substances for the treatment of pain or a condition causing pain, including intractable pain. The bill would require the physician and surgeon to exercise reasonable care in determining whether a particular patient or condition, or complexity of the patient's treatment, including, but not limited to, a current or recent pattern of drug abuse, requires consultation with, or referral to, a more qualified specialist. A violation of this requirement would be a crime.

Existing law, except as specified, prohibits a person from prescribing or administering or dispensing a controlled substance to an addict or habitual user. Existing law generally makes it unprofessional conduct for a physician and surgeon to prescribe, sell, furnish, give away, or administer certain drugs to an addict or habitué, or to offer to do so, but contains certain exceptions from this provision.

This bill would delete the provision making it unprofessional conduct for a physician and surgeon to prescribe, sell, furnish, give away, or administer certain drugs to an addict or habitué, or to offer to do so, and would instead prohibit a physician and surgeon from prescribing, dispensing, or administering prescription drugs or controlled substances to an addict, except for purposes of maintenance on, or detoxification from, prescription drugs or controlled substances or in specified other instances. A violation of this requirement would be a crime.

Existing law makes it unprofessional conduct for a physician and surgeon to prescribe, dispense, or furnish dangerous drugs without a good faith prior examination and medical indication.

This bill would require an appropriate prior examination instead of a good faith prior examination. The bill would make related legislative findings.

Because this bill would create new crimes, it would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state.

Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. The Legislature hereby finds and declares the
2 following:

3 (a) The investigation and prosecution of pain management
4 cases in California have evolved over the past 15 years.

5 (b) The Pain Patient's Bill of Rights and the Intractable Pain
6 Treatment Act were created to ensure patients received adequate
7 pain medication and to protect a physician and surgeon from
8 being disciplined solely because of the amounts of controlled
9 substances he or she prescribed or administered.

10 (c) California recognizes that prescription medication,
11 including controlled substances, can play a critical role in the
12 treatment of pain, and, in and of itself, is an insufficient basis to
13 determine if a physician and surgeon has violated the standard of
14 care in his or her treatment of pain management patients.

15 (d) California also recognizes that the Intractable Pain
16 Treatment Act may be an impediment to easily accessible pain
17 treatment which can be confusing to both licensees and
18 regulating entities. It can also provide a false sense of security to
19 licensees who may erroneously believe it immunizes them from
20 any actions against their license.

21 (e) In recognition of the Medical Board of California's
22 consumer protection mandates, and in an attempt to provide
23 better treatment of pain patients, as well as protect the public
24 through the appropriate investigation and prosecution of those
25 who violate the standard of care when treating pain patients, the
26 Legislature recognizes that it is time to reflect upon the current
27 state of pain management to aid both those who treat pain
28 patients, as well as those who investigate and prosecute
29 physicians and surgeons.

30 SEC. 2. Section 725 of the Business and Professions Code is
31 amended to read:

1 725. (a) Repeated acts of clearly excessive prescribing,
2 *furnishing, dispensing*, or administering of drugs or treatment,
3 repeated acts of clearly excessive use of diagnostic procedures,
4 or repeated acts of clearly excessive use of diagnostic or
5 treatment facilities as determined by the standard of the
6 community of licensees is unprofessional conduct for a physician
7 and surgeon, dentist, podiatrist, psychologist, physical therapist,
8 chiropractor, or optometrist. ~~However, pursuant to Section~~
9 ~~2241.5, no physician and surgeon in compliance with the~~
10 ~~California Intractable Pain Treatment Act shall be subject to~~
11 ~~disciplinary action for lawfully prescribing or administering~~
12 ~~controlled substances in the course of treatment of a person for~~
13 ~~intractable pain.~~

14 (b) Any person who engages in repeated acts of clearly
15 excessive prescribing or administering of drugs or treatment is
16 guilty of a misdemeanor and shall be punished by a fine of not
17 less than one hundred dollars (\$100) nor more than six hundred
18 dollars (\$600), or by imprisonment for a term of not less than 60
19 days nor more than 180 days, or by both the fine and
20 imprisonment.

21 (c) *For purposes of this section, “clearly excessive” shall*
22 *mean an amount or extent that is both (1) without substantial*
23 *medical basis and (2) substantially greater than the usual*
24 *amount of prescribing, administration, or use of therapeutic*
25 *modalities.*

26 SEC. 3. Section 2241 of the Business and Professions Code is
27 amended to read:

28 2241. ~~Unless otherwise provided by this section, the~~
29 ~~prescribing, selling, furnishing, giving away, or administering or~~
30 ~~offering to prescribe, sell, furnish, give away, or administer any~~
31 ~~of the drugs or compounds mentioned in Section 2239 to an~~
32 ~~addict or habitué constitutes unprofessional conduct.~~

33 ~~If the drugs or compounds are administered or applied by a~~
34 ~~licensed physician and surgeon or by a registered nurse acting~~
35 ~~under his or her instruction and supervision, this section shall not~~
36 ~~apply to any of the following cases:~~

37 (a) *A physician and surgeon may not prescribe, dispense, or*
38 *administer prescription drugs, including prescription controlled*
39 *substances, to an addict under his or her treatment, except as*
40 *follows:*

1 (1) A physician and surgeon may prescribe, dispense, or
2 administer prescription drugs or prescription controlled
3 substances to an addict for purposes of maintenance on or
4 detoxification from prescription drugs or controlled substances
5 as set forth in Section 11217 of the Health and Safety Code.
6 Nothing in this paragraph shall authorize a physician and
7 surgeon to prescribe, dispense, or administer dangerous drugs or
8 controlled substances to a person he or she knows or reasonably
9 believes is using or will use the drugs or substances for a
10 nonmedical purpose.

11 (2) Drugs or controlled substances may be administered or
12 applied to an addict by a physician and surgeon, or by a
13 registered nurse acting under his or her instruction and
14 supervision, under the following circumstances:

15 (A) Emergency treatment of a patient whose addiction is
16 complicated by the presence of incurable disease, ~~serious~~
17 ~~accident~~ acute accident, illness, or injury, or the infirmities
18 attendant upon age.

19 ~~(b)~~

20 (B) Treatment of addicts ~~or habitués~~ in state licensed
21 institutions where the patient is kept under restraint and control,
22 or in city or county jails or state prisons.

23 ~~(c)~~

24 (C) Treatment of addicts as provided for by Section 11217.5
25 of the Health and Safety Code.

26 (b) For purposes of this section and Section 2241.5, "addict"
27 means a person whose actions are characterized by one or more
28 of the following:

29 (1) Impaired control over drug use.

30 (2) Compulsive use.

31 (3) Continued use despite harm and craving.

32 SEC. 4. Section 2241.5 of the Business and Professions Code
33 is repealed.

34 ~~2241.5. (a) Notwithstanding any other provision of law, a~~
35 ~~physician and surgeon may prescribe or administer controlled~~
36 ~~substances to a person in the course of the physician and~~
37 ~~surgeon's treatment of that person for a diagnosed condition~~
38 ~~causing intractable pain.~~

39 ~~(b) "Intractable pain," as used in this section, means a pain~~
40 ~~state in which the cause of the pain cannot be removed or~~

1 otherwise treated and which in the generally accepted course of
2 medical practice no relief or cure of the cause of the pain is
3 possible or none has been found after reasonable efforts,
4 including, but not limited to, evaluation by the attending
5 physician and surgeon and one or more physicians and surgeons
6 specializing in the treatment of the area, system, or organ of the
7 body perceived as the source of the pain.

8 (c) No physician and surgeon shall be subject to disciplinary
9 action by the board for prescribing or administering controlled
10 substances in the course of treatment of a person for intractable
11 pain.

12 (d) This section shall not apply to those persons being treated
13 by the physician and surgeon for chemical dependency because
14 of their use of drugs or controlled substances.

15 (e) This section shall not authorize a physician and surgeon to
16 prescribe or administer controlled substances to a person the
17 physician and surgeon knows to be using drugs or substances for
18 nontherapeutic purposes.

19 (f) This section shall not affect the power of the board to deny,
20 revoke, or suspend the license of any physician and surgeon who
21 does any of the following:

22 (1) Prescribes or administers a controlled substance or
23 treatment that is nontherapeutic in nature or nontherapeutic in the
24 manner the controlled substance or treatment is administered or
25 prescribed or is for a nontherapeutic purpose in a nontherapeutic
26 manner.

27 (2) Fails to keep complete and accurate records of purchases
28 and disposals of substances listed in the California Controlled
29 Substances Act, or of controlled substances scheduled in, or
30 pursuant to, the federal Comprehensive Drug Abuse Prevention
31 and Control Act of 1970. A physician and surgeon shall keep
32 records of his or her purchases and disposals of these drugs,
33 including the date of purchase, the date and records of the sale or
34 disposal of the drugs by the physician and surgeon, the name and
35 address of the person receiving the drugs, and the reason for the
36 disposal of or the dispensing of the drugs to the person and shall
37 otherwise comply with all state recordkeeping requirements for
38 controlled substances.

39 (3) Writes false or fictitious prescriptions for controlled
40 substances listed in the California Controlled Substances Act or

1 ~~scheduled in the federal Comprehensive Drug Abuse Prevention~~
2 ~~and Control Act of 1970:~~

3 ~~(4) Prescribes, administers, or dispenses in a manner not~~
4 ~~consistent with public health and welfare controlled substances~~
5 ~~listed in the California Controlled Substances Act or scheduled in~~
6 ~~the federal Comprehensive Drug Abuse Prevention and Control~~
7 ~~Act of 1970:~~

8 ~~(5) Prescribes, administers, or dispenses in violation of either~~
9 ~~Chapter 4 (commencing with Section 11150) or Chapter 5~~
10 ~~(commencing with Section 11210) of Division 10 of the Health~~
11 ~~and Safety Code or this chapter:~~

12 ~~(g) Nothing in this section shall be construed to prohibit the~~
13 ~~governing body of a hospital from taking disciplinary actions~~
14 ~~against a physician and surgeon, as authorized pursuant to~~
15 ~~Sections 809.05, 809.4, and 809.5:~~

16 SEC. 5. Section 2241.5 is added to the Business and
17 Professions Code, to read:

18 2241.5. (a) A physician and surgeon may prescribe for or
19 dispense or administer to a person under his or her treatment for
20 a medical condition dangerous drugs or prescription controlled
21 substances for the treatment of pain or a condition causing pain,
22 including, but not limited to, intractable pain.

23 (b) A physician and surgeon's authority under this section
24 shall be subject to the provisions of Sections 2234, 2241, 2242,
25 and 2242.1, and Sections 11152, 11153, and 11154 of the Health
26 and Safety Code. Nothing in this section shall authorize a
27 physician and surgeon to prescribe, administer or dispense
28 dangerous drugs or controlled substances to a person he or she
29 knows or reasonably believes is using or will use the drugs or
30 substances for a non-medical purpose.

31 (c) Any physician and surgeon has the legal authority to treat a
32 patient for pain using dangerous drugs or prescription controlled
33 substances but the prescribing, administering, or dispensing
34 physician and surgeon shall exercise reasonable care in
35 determining whether a particular patient or condition, or
36 complexity of the patient's treatment, including, but not limited
37 to, a current or recent pattern of drug abuse, requires consultation
38 with or referral to a more qualified specialist.

39 SEC. 6. Section 2242 of the Business and Professions Code is
40 amended to read:

2242. (a) Prescribing, dispensing, or furnishing dangerous drugs as defined in Section 4022 without ~~a good faith~~ *an appropriate* prior examination and ~~a medical indication therefor~~, constitutes unprofessional conduct.

(b) No licensee shall be found to have committed unprofessional conduct within the meaning of this section if, at the time the drugs were prescribed, dispensed, or furnished, any of the following applies:

(1) The licensee was a designated physician and surgeon or podiatrist serving in the absence of the patient's physician and surgeon or podiatrist, as the case may be, and if the drugs were prescribed, dispensed, or furnished only as necessary to maintain the patient until the return of his or her practitioner, but in any case no longer than 72 hours.

(2) The licensee transmitted the order for the drugs to a registered nurse or to a licensed vocational nurse in an inpatient facility, and if both of the following conditions exist:

(A) The practitioner had consulted with the registered nurse or licensed vocational nurse who had reviewed the patient's records.

(B) The practitioner was designated as the practitioner to serve in the absence of the patient's physician and surgeon or podiatrist, as the case may be.

(3) The licensee was a designated practitioner serving in the absence of the patient's physician and surgeon or podiatrist, as the case may be, and was in possession of or had utilized the patient's records and ordered the renewal of a medically indicated prescription for an amount not exceeding the original prescription in strength or amount or for more than one refilling.

(4) The licensee was acting in accordance with Section 120582 of the Health and Safety Code.

SEC. 7. Section 11156 of the Health and Safety Code is amended to read:

11156. (a) No person shall prescribe for or administer, or dispense a controlled substance to an addict or habitual user, or to any person representing himself *or herself* as such, except as permitted by this division.

(b) *For purposes of this section, "addict" means a person whose actions are characterized by one or more of the following:*

(1) *Impaired control over drug use.*

(2) *Compulsive use.*

1 (3) *Continued use despite harm and craving.*

2 SEC. 8. No reimbursement is required by this act pursuant to
3 Section 6 of Article XIII B of the California Constitution because
4 the only costs that may be incurred by a local agency or school
5 district will be incurred because this act creates a new crime or
6 infraction, eliminates a crime or infraction, or changes the
7 penalty for a crime or infraction, within the meaning of Section
8 17556 of the Government Code, or changes the definition of a
9 crime within the meaning of Section 6 of Article XIII B of the
10 California Constitution.

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